A.F.R.

-07 2006

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.3874 of 2000

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Petitioner	:	1.	State of M.P., through the Secretary, Department of Higher Education, Bhopal.
	:	2.	The Commissioner, Higher Education, Satpuda Bhavan, Bhopal.
	:	3.	The Principal, Govt. Girls College, Durg

Versus

Respondents	:	1.	Smt. Ratnamala Meshram, Asstt. Professor (Zoology), R/o F-2/11, New Civil Lines, Durg (M.P.)
	:	2.	M.P. Administrative Tribunal, Jabalpur (M.P.)

Shri Utkarsh Verma, Dy. Govt. Advocate for the petitioners/State

Counsel Shri V.G.Tamaskar, Counsel for the respondent No.1.

ORAL ORDER

(Passed on 4th January 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

1. The State of M.P. (now the State of Chhattisgarh) and its Education authorities have preferred this writ petition under Articles 226/227 of the Constitution of India calling in question the validity and correctness of the order of the M. P. Administrative Tribunal (for short 'the Tribunal) dated 29.10.1999 passed in O.A.No.942/1993.

2. The background facts leading to the filing of this writ petition, in brief, are as follows:

The first respondent herein was appointed temporarily as Lecturer in the then existing pay scale of Rs.620-1300/- vide order dated 10.11.1980, marked as Annexure A/4, issued by the Principal, Government Girls College, Raipur in exercise of the powers conferred on her by order dated 25.7.1975 of the undivided Government of Madhya Pradesh. The first respondent reported for duty in pursuance of the above appointment order on 12.11.1980. Thereafter, the first respondent was appointed from time to time in exigencies of services with breaks. Her last appointment as Lecturer/Assistant Professor for a period of six months was with effect from 6.10.1986, marked as Annexure A/5 passed by the Principal, Digvijay College, Rajnandgaon. Her term of appointment came to an end on 11.2.1987.

3. It is the specific case of the Department, as pressed into service by the learned Dy. Govt. Advocate, that the first respondent was not in service of the Government between 11.2.1987 and 4.11.1987. This assertion of the petitioners as highlighted by the learned Dy. G.A. is contested by Shri V.G.Tamaskar, learned counsel for first respondent and he would submit that in pursuance of Annexure A/5 (appointment order), the first respondent was in service till 30th June, 1987 as per Annexure A/6. Be that as it may, admittedly, on 2.3.1987 the amended recruitment rules governing appointment to various teaching cadres in the Education Department were brought into force. As per the amended recruitment rules, a candidate in order to qualify himself to the post of Assistant Professor of Zoology should possess M.Phil/Ph.D degree. After the amendment rules came into force w.e.f. 2.3.1987, the first respondent was appointed as Assistant Professor of Zoology on ad hoc basis for a period of 4 years vide order dated 4.11.1987, marked as Annexure A/8. She was appointed for a specific period ending with 16.11.1991 and with a perfect understanding between the contracting parties that the first

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respondent should acquire the required qualification i.e. M.Phil/Ph.D. in the meanwhile and if she does not acquire the required qualification, her appointment as per Annexure A/5 would automatically come to an end with the expiry of the term specified in Annexure A/5. It appears that since the first respondent did not acquire the required qualification of M.Phil or Ph.D., her appointment was terminated w.e.f. 19.3.1993.

4. The first respondent being aggrieved by the above action of the Department, instituted O.A.No.942/1993 before the Tribunal.

5. Before the Tribunal, on behalf of first respondent, it was contended that as per unamended rules known as M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967 (for short 'Recruitment Rules 1967'), condition of passing of M.Phil./Ph.D. was not prescribed for regularization of the services of a teacher in the post of Assistant Professor and since the said Rules held the period when the first respondent was appointed as Assistant Professor of Zoology under Annexure A/5, the amended Rules which were brought into force w.e.f. 2.3.1987 could not be pressed into service to defend the impugned action of the Department. The Tribunal, having found merit in the above contention, allowed the application by its order dated 29.10.1999 and directed the petitioners herein to take back the first respondent in service and consider her case for regularization by constituting Screening Committee as per Rule 6 of the M. P. Regularisation of Ad hoc Appointment Rules, 1986 (hereinafter referred to as 'the Ad hoc Rules, 1986') within a fixed time-frame. Hence, this writ petition by the aggrieved State and its Department.

6. We have heard the learned counsel for the parties and perused the impugned order as well as other material papers appended to the writ petition.

7. It was contended on behalf of the State that the first respondent was appointed from time to time during various spells was purely on ad hoc temporary basis and for specific period and that too

with considerable breaks. It was also contended that the first respondent was out of employment after a term of appointment (Annexure A/5) came to an end quite before she was again freshly appointed on 4.11.1987 under Annexure A/8. It was contended that since the first respondent was appointed freshly on 4.11.1987 for a term ending with 16.11.1991, her appointment was governed by the amended Rules and not the unamended Recruitment Rules of 1967. It was contended that since the first respondent, admittedly, failed to acquire required educational qualification of M.Phil/Ph.D! within the stipulated time, the Department justified in terminating her services w.e.f.19.3.1993 and therefore, the Tribunal ought not to have interfered with the termination order.

8. Shri V.G.Tamaskar, learned counsel for first respondent, per contra, while supporting the impugned order of the Tribunal, would place strong reliance on the provisions of Rule 5 of the M.P.Regularisation of Adhoc Rules, 1990 (for short 'the Rules 1990') published in M.P.Rajpatra (Asadharan) dated 24.1.1990. Shri Tamaskar would also contend that the petitioners ought to have given eight years time under Annexure A/8 to the first respondent to acquire the required educational qualification of M.Phil/Ph.D.

9. Shri Tamaskar alternatively would contend that even if Rule 5 of the Rules 1990 would not enable the first respondent to seek regularization of her services in the cadre of Assistant Professor of Zoology, even then, in terms of the law laid down by the Apex Court in the case of *Dr. Prit Singh v. S.K.Mangal and others*[1] *Gopal Krushna Rath v. M.A.A.Baig (dead) by L.Rs. and others*[2] and *Nar Singh Pal v. Union of India and others*[3], the Department is duty bound to regularize her services and continue her in the service under State.

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1. 1993 Suppl. (1) SCC 714
2. (1999) 1 SCC 544
3. (2000) 3 SCC 588

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10. Having heard the learned counsel for the parties, the only question which arises for our consideration is whether the first respondent has made out a case for issuing mandamus to the State and State authorities to take back her into services and to consider her case for regularization of her service in the cadre of Assistant Professor of Zoology by constituting Screening Committee as per rule 6 of the Ad hoc Rules, 1986. It needs to be noticed at the threshold itself that mandamus would never go to an Authority unless the person seeking that writ satisfactorily shows that he has an established vested right to seek a direction to the State authorities to perform an obligation in a particular manner or method. The materials laid before the Court would clinchingly show that till 6.11.1986, the first respondent was appointed purely on ad hoc basis, that too, for specific periods with considerable breaks in service. At this stage, it needs to be noted that these appointments were not made in conformity with the Recruitment Rules. The latest ad hoc appointment in the series was the appointment order issued under Annexure A/5 dated 6.10.1986 for a particular period of six months. It is true that when Annexure A/5 appointment order was issued, the unamended Rules were holding the field and as per unamended Rules, it was not the requirement of the law that a candidate for the post of Assistant Professor in Zoology should possess M.Phil./Ph.D. qualification. As pointed out supra, as per the State and State Authorities, the first respondent was out of employment from 11.2.1987 to 4.11.1987 whereas according to the learned counsel for the first respondent, she was in employment upto the end of 30.06.1987. There is no need for us to resolve the above factual controversy. Suffice it to state that even if we accept the assertion of the first respondent as correct, the fact remains that first respondent was out of service between 1.7.1987 and 4.11.1987. Thus, on 4.11.1987 the first respondent was freshly appointed as Assistant

Professor of Zoology and that too, purely on temporary and ad hoc basis and for a specific term ending with 16.11.1991. Admittedly, the first respondent did not acquire the required educational qualification of M.Phil./Ph.D. When the first respondent was appointed afresh on 4.11.1987, the amended Rules which were brought into force w.e.f. 2.3.1987 were holding the field and the first respondent's appointment was bound by those amended Rules. Therefore, insistence of State and its authorities that the first respondent in order to qualify herself to the post of Assistant Professor of Zoology and regularization of her services in the said post should acquire either M.Phil. or Ph.D. is justified as well as legal and no exception can be taken to that insistence.

11. This takes us to the next contention of Shri Tamaskar that under Annexure A/5, the first respondent ought to have given eight years time to acquire the M.Phil./Ph.D. This argument is based on the second proviso to schedule-3 in item-2 of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967 which reads as follows:

> "Provided further that if a candidate possessing the qualifications as at (a) above, is not available or not considered suitable, the department on the recommendation of Selection Committee may appoint a person possessing a good academic record on the condition that he will have to obtain an M.Phil. degree or a recognized degree beyond the Master's level within eight years of his appointment failing which he will not be able to earn future increments till he obtain that degree or gives evidence of equivalent published work of high standard."

12 The above contention of the learned counsel is not acceptable to us for more than one reason. In the first instance, it needs to be noticed that if the first respondent thought that she ought to have given eight years time to acquire the required educational qualification, she ought not to have accepted the appointment as per Annexure A-8 and would have insisted that unless she was given eight years time for acquiring the educational qualification, she would not

accept the appointment. The first respondent for the reasons best known to her with her eyes wide open accepted the appointment without any demur and she did not acquire the required qualifications. Be that as it may, if we carefully peruse the second proviso extracted above, that would indicate that that is only an enabling provision which empowers the recruiting agency of the State to depart from the general rule and making appointment of a candidate who does not possess the requisite qualification only in an exigency where the qualified candidates are not available. The exigency contemplated and departure provided for in the proviso has application only whether the recruiting agency of the State proceeds to recruit personnel on a regular basis and not strictly in conformity with Cadre and Recruitment Rules. Here is a case where the first respondent made entry into the service by backdoor. It is not and could not be the case of the first respondent that she had applied for the post of Assistant Professor in Zoology in pursuance of any employment notification, she competed with all other eligible candidates and after completion of recruitment process, she came to be pointed as Assistant Professor of Zoology. The facts stated supra would show that in exigency of service and as a stop-gap arrangement and on ah hoc basis, she was appointed for specified small spells of period from time to time that too with considerable breaks. Therefore, the above proviso on which reliance is placed by Shri V.G. Tamaskar, in our considered opinion, has no application to the facts of the case.

13. Lastly, in the three judgments of the Apex Court cited by Shri V.G. Tamaskar, learned counsel, the Supreme Court dealt with altogether different peculiar situations and those decisions have no bearing in decision-making in this case. It is well settled that it is for the State Employer to prescribe what qualification a candidate should possess for any post and it is not the legitimate domain of the Court to prescribe qualification for and on behalf of the State Employer. We need not deal with this aspect further, because, the first

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respondent is not questioning prescription of M.Phil./Ph.D. degree as a qualifying degree for the post of Assistant Professor of Zoology in the Government Colleges. The petitioners have made out a case for our intervention under Articles 226 and 227.

14. In the result, we allow the writ petition and set aside order of the Tribunal dated 29.10.1989 passed in O.A. No. 942/1993 and dismiss the O.A. No. 942/1993, however, with no order as to costs.

15. However, before parting with this case, we make it very clear that if there is any opportunity to engage the services of the petitioner in the Department, this order shall not come in the way of the State authorities for considering the case of the first respondent for such service.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Sd/-
Chief Justice

Anjali
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